

ALSTON & BIRD

1201 West Peachtree Street
Atlanta, GA 30309
Tel: 404-881-7000 | Fax: 404-881-7777

Emily Chambers Welch

Direct Dial: 404-881-7159

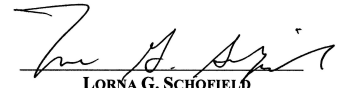
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Plaintiff's sealing application is **GRANTED** for substantially the reasons stated in Plaintiff's letter. The letter at Dkt. No. 345 shall be sealed with access limited to the parties listed in the appendix. The Clerk of Court is respectfully directed to close the motion at Dkt. No. 344.

VIA E-FILE

The Honorable Sarah L. Cave
Daniel Patrick Moynihan United States Courthouse
500 Pearl St.
New York, New York 10007

Dated: August 31, 2022
New York, New York


LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE

Re: *RiseandShine Corp. d/b/a Rise Brewing v. PepsiCo, Inc.*, 1:21-cv-06324-LGS:
Motion to Seal Rise Brewing's Letter Request for Relief

Dear Judge Cave:

Pursuant to Section I.D.3 of the Court's Individual Rules and Procedures for Civil Cases ("Individual Rules"), Plaintiff RiseandShine Corporation d/b/a Rise Brewing ("Rise") respectfully submits this letter motion to file under seal portions of Rise Brewing's Response to Pepsi's Letter Request (Dkt. No. 340) (the "Response"). Information disclosed in the Response includes quotes from confidential and outside attorneys-eyes only documents produced in this matter by both PepsiCo and Rise Brewing.

I. Legal Standard

While federal courts recognize a general common law right of public access to court records and proceedings, the right of access is not absolute and courts have discretion to deny such public access where appropriate. *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597-99 (1978)). "To determine whether documents should be placed under seal, a court must balance the public's interest in access to judicial documents against the privacy interests of those resisting disclosure." *In re Utica Mut. Ins. Co. v. INA Reinsurance Co.*, 468 F. App'x 37, 39 (2d Cir. 2012) (citing *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119-20 (2d Cir. 2006)).

Court documents may be sealed to avert "[p]otential damage from the release of sensitive business information" and protect from disclosure certain information that may harm a business's ability to compete in the future. *Bergen Brunswig Corp. v. Ivax Corp.*, No. 97 Civ. 2003, 1998 WL 113976, at *3 (S.D.N.Y. Mar. 12, 1998) (collecting cases); *Std. Inv. Chtd., Inc. v. Fin. Indus. Regulatory Auth., Ind.*, 347 F. App'x 615, 617 (2d Cir. 2009) (affirming district court's sealing on grounds that the party's "interest in protecting

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confidential business information outweighs the qualified First Amendment presumption of public access”).

II. Sealing Justification

The sensitive business information of PepsiCo excerpted in Rise Brewing’s Response bears on product development, marketing, and investment activities of Defendant. Courts recognize that these types of materials are appropriately maintained under seal. *See, e.g., Encyclopedia Brown Prods., Ltd. v. Home Box Office, Inc.*, 26 F. Supp. 2d 606, 612-14 (S.D.N.Y. 1998) (finding that confidential business information should be sealed because it “provide[s] valuable insights into a company’s current business practice”). The sensitive business information of Rise Brewing excerpted in the Response bears on confidential settlement communications, the same communications previously redacted by order of this Court. Dkt. 343.

A public redacted copy of the Response is being filed hereafter. A list of counsel who should be granted access to the sealed material in the Supplemental Letter is listed in Appendix 1. Rise Brewing has served the sealed Response on Defendant’s counsel via ECF contemporaneously with this filing.

Respectfully Submitted,

/s/ Emily Chambers Welch
Emily Chambers Welch
Counsel for Plaintiff RiseandShine
Corporation d/b/a Rise Brewing

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**Appendix 1: List of Counsel Designated to Access
“Outside Attorneys’ Eyes Only” Information**

All counsel of record may have access to the filings:

Counsel for Plaintiff RiseandShine Corporation d/b/a Rise Brewing

Jason Demian Rosenberg

Emily Chambers Welch

Holly Hawkins Saporito

Neal Joseph McLaughlin

Paul J. Tanck

Christopher McArdle

Shaleen Patel

Counsel for Defendant PepsiCo, Inc.

Allison W. Buchner

Dale Margaret Cendali

Diana Torres

Lauren Schweitzer

Maria Monica Beltran

Paul J. Reilly

Susan Cannon Kennedy

Monica H. Smith

Saghar Esfandiarifard